



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2016-0582

RIN 1625-AA09

Drawbridge Operation Regulation; Keweenaw Waterway, Houghton and Hancock, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the US41 bridge, mile 16.0 over the Keweenaw Waterway between the towns of Houghton and Hancock, Michigan. The Michigan Department of Transportation (MDOT) has requested a review of the current operating schedule of the drawbridge due to a lack of openings during the early morning hours. They have also requested to expand and modify the current winter operating schedule.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0582 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments"

portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard; telephone 216-650-5408, e-mail Lee.D.Soule@uscg.mil.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
MDOT	Michigan Department of Transportation
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

##### II. Background, Purpose and Legal Basis

MDOT has requested to change the operating schedule of the US41 bridge at mile 16.0. The US41 bridge is the only crossing over the Keweenaw Waterway and connects the towns of Houghton and Hancock, Michigan. The current operating

schedule has been in place for approximately 31 years and the use of the waterway has significantly changed, prompting the request to modify the current regulation.

Keweenaw Peninsula is the northernmost part of Michigan's Upper Peninsula projecting into Lake Superior. The Keweenaw Waterway runs northwesterly to southeasterly and separates the peninsula from the mainland making the US41 bridge the only bridge crossing for residents and visitors to the peninsula.

The Keweenaw Waterway is used by recreational, commercial, inspected and uninspected passenger, and towing vessels. The US41 bridge is a vertical lift type drawbridge and provides a horizontal clearance of 250 feet, a vertical clearance of 103 feet in the fully open position, a vertical clearance of 7 feet in the closed position, and a vertical clearance of 35 feet in the intermediate position. The US41 bridge is a bi-level bridge originally designed with the upper level providing access for automobiles and the lower level providing access for rail, oversized vehicles, and snowmobiles.

The rail service to the peninsula has been discontinued and oversized vehicles must provide advance notice to the state before traveling over the road to the peninsula. Most recreational and commercial vessel traffic, including passenger vessel services, end prior to November 15 each year and do not resume services until after May 7 due to the formation of ice in the waterway. Large commercial freighter

vessels do not routinely pass through the Keweenaw Waterway.

The current regulation, 33 CFR § 117.635, requires the bridge to operate with a 24-hour advance notice for openings from January 1 through March 15 each year. From March 16 through December 31 the bridge opens on signal at all times.

### III. Discussion of Proposed Rule

This rule proposes to amend 33 CFR § 117.635 in accordance with the below described changes. The table below shows total bridge opening data provided by MDOT, from April 16 to December 14, between the hours of midnight and 4 a.m., for the past 6 years.

YEAR	OPENINGS
2010	4
2011	6
2012	6
2013	10
2014	7
2015	6

This proposed rule would allow the bridge to operate with at least a 2-hour advance notice for openings from April 15 through December 14 between the hours of midnight and 4 a.m. During these hours no bridge tender will be required at the bridge. The bridge will be placed in the intermediate

position during this 4-hour time period providing a vertical clearance of 35 feet. Vessels requiring a full bridge opening will still be able to obtain an opening with a 2-hour advance notice. Vessels may also go around the peninsula to avoid passing through the bridge.

The table below shows the total bridge opening data provided by MDOT, between December 15 and April 15, for the past 5 years.

YEAR	OPENINGS
2011	0
2012	1
2013	5
2014	0
2015	0

This proposed rule would allow the bridge to operate with at least a 12-hour advance notice for openings from December 15 through April 14. During these hours no bridge tender will be required at the bridge. Vessels may also go around the peninsula to avoid passing under the bridge.

At all other times, the bridge will continue to open on signal.

#### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the infrequent requests for openings and the ability of vessels to still transit the bridge given advanced notice. Additionally, vessels may go around the peninsula.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or

action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.



#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical

exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.635 to read as follows:

§ 117.635 Keweenaw Waterway

The draw of the US41 bridge, mile 16.0 between Houghton and Hancock, shall open on signal; except that from April 15 through December 14, between midnight and 4 a.m., the draw shall be placed in the intermediate position and open on signal if at least 2 hours notice is given. From December 15 through April 14 the draw shall open on signal if at least 12 hours notice is given.

Dated: July 12, 2016

J. E. RYAN

Rear Admiral, U. S. Coast Guard

Commander, Ninth Coast Guard District

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